



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/148682

PRELIMINARY RECITALS

Pursuant to a petition filed April 11, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on June 19, 2013, at West Bend, Wisconsin.

The issue for determination is whether Washington County Department of Social Services (the agency) correctly determined that Petitioner was over-issued FoodShare benefits in the amount of \$1410.00 for the period of 07/01/12 to 12/31/12.

NOTE: The record was held open until June 21, 2013, to give the agency an opportunity to submit a copy of the notification of FoodShare Overissuance and documentation supporting its contention that Petitioner purchased and prepared food with her representative/Power of Attorney/roommate, J.S. The agency submitted a packet containing a Notification of FoodShare Overissuance issued to J.S. (not Petitioner), a FoodShare Overpayment Worksheet, a summary by Mr. [REDACTED], an Application Summary generated January 13, 2012, and pages 7-12 of a Six Month Report Form (SMRF) dated December 3, 2012. The packet has been marked as Exhibit 4 and entered into the record.

The record was further held open until June 27, 2013 to give Mr. [REDACTED] an opportunity to respond to the agency's submission. Mr. [REDACTED] submitted his response. It has been marked as Exhibit 5 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Ken [REDACTED], Economic Support Specialist
Washington County Department of Social Services
333 E. Washington Street

Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On January 13, 2012, Petitioner signed electronically, an application summary, which indicated that Petitioner and J.S., Petitioner's roommate and power of attorney, live together and "buy food and eat meals together". (Exhibit 4, pg. 8)
3. On December 3, 2012, Petitioner submitted a six-month report form indicating that she and her roommate/power of attorney did not purchase and prepare food together. (Exhibit 4, pg. 17)
4. On January 5, 2012, Petitioner and her roommate/power of attorney signed a Food Unit Declaration indicating that they purchase, prepare and eat food separately from one another. (Exhibit 3, pg. 2)
5. On or about April 8, 2013, the agency sent Petitioner a Notification of FoodShare Overissuance, indicating that she was overissued FoodShare benefits for the period of July 1, 2012 to December 31, 2012, in the amount of \$1410.00. (Testimony of Petitioner's roommate/power of attorney)
6. Petitioner filed a request for Fair Hearing that was received on April 11, 2013. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also FoodShare Wisconsin Handbook, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

Petitioner does not dispute the fact that an overpayment occurred. Nor does Petitioner quarrel with the agency's calculation that she received a total of \$1410.00 in benefits between July 1, 2012 and December 31, 2012.

It is undisputed that Petitioner received the \$1410 in benefits, because the agency included her roommate/power of attorney in her food unit. However, Petitioner asserts through her roommate/power of attorney, that during the time in question, she purchased and prepared food separately from her roommate/power of attorney and as such, he should not have been included in her food unit. Petitioner asserts that she had no income and was, therefore, entitled to \$200 per month in FoodShare benefits. Thus, Petitioner argues that the overpayment amount should then be \$210.00. ($200 \times 6 = \1200 allegedly correct allotment; $\$1410 - \$1200 = \$210$ overpayment)

Petitioner signed an application in January 2012, indicating that she purchased and prepared food with her roommate/power of attorney and that the information in her application was, under penalty of perjury,

correct and complete to the best of her knowledge. (See Exhibit 4, pg. 11) However, the agency did not provide any documentation to prove Petitioner and her roommate/power of attorney continued to purchase and prepare food together from July 2012 through December 31, 2012. The agency did not submit case comments, a subsequent renewal, a record of EBT use, or other reliable evidence such as surveillance footage from stores in which the EBT card was used or testimony from anyone who saw the pair purchase/prepare/eat food together. Consequently, the agency has not met its burden to prove that Petitioner and her roommate/power of attorney purchased and prepared food together between July 1, 2012 through December 31, 2012.

It should be noted that the agency attempted to rely upon a decision in case FOP/143707, in which the administrative law judge found the agency correctly sought to recoup, from Petitioner's roommate/power of attorney, benefits paid between November 1, 2011 and June 30, 2012. (It does not appear that Petitioner filed her own appeal of that overpayment.) However, the current hearing concerns a different period of time (July 1, 2012 through December 31, 2012) and it concerns only the recoupment imposed upon Petitioner, not her roommate/power of attorney. The Division of Hearings and Appeals can only decide the case in front of it at the moment and the agency has not currently brought forth sufficient evidence to prove the majority of its case.

If the roommate/power of attorney wished to appeal the overpayment being recouped from him, he needed to file his own appeal.

CONCLUSIONS OF LAW

Petitioner was overissued FoodShare benefits in the amount of \$210.00 for the period of July 1, 2012 through December 31, 2012.

THEREFORE, it is

ORDERED

That the agency amend the notification of FoodShare overissuance sent to Petitioner to reflect an overpayment amount of \$210.00 between July 1, 2012 through December 31, 2012. The agency shall take all administrative steps necessary to complete these tasks within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

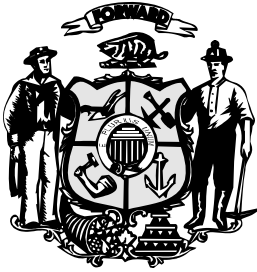
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of June, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 27, 2013.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability